

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:17-cr-0192-SEB-DML
)	
KYLE L. WILLIAMS,)	- 01
)	
Defendant.)	

REPORT AND RECOMMENDATION

On December 14, 2017, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on December 1, 2017. Defendant Williams appeared in person with his appointed counsel Michael Donahoe. The government appeared by Kendra Klump, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Jason Phillips.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Williams of his rights and ensured he had a copy of the Petition. Defendant Williams waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Williams admitted violations 1, 2, 3, and 4 as set forth in the Petition. [Docket No. 9.]
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>“You shall not use or possess alcohol.”</p> <p>On November 27, 2017, this officer detected alcohol on his breath at a home visit. Mr. Williams submitted positive urinalysis tests that were positive for alcohol on October 25, 2017, and November 20, 2017. The offender submitted positive breath tests for alcohol on October 31, 2017, (.27 grams of alcohol), and November 8, 2017, (at a treatment center - specific results unknown). There are also multiple instances of alcohol detection prior to the addition of this condition on October 17, 2017.</p>
2	<p>“You shall not purchase, use, distribute or administer any controlled substances.”</p> <p>On November 20, 2017, Mr. Williams submitted a urinalysis that yielded positive for cannabinoids. At a home visit on November 27, 2017, he admitted smoking marijuana.</p>
3	<p>“You shall participate in a mental health treatment program and abide by the rules and regulations of that program. You shall take all mental health medications that are prescribed by your treating physician.”</p> <p>On November 20, 2017, during a home visit Mr. Williams was reminded of his obligation to attend a[n] appointment with a psychiatrist on November 27, 2017. This appointment was important because it was contingent upon him entering a substance abuse treatment program on November 28, 2017. On November 27, 2017, Mr. Williams failed to report to Midtown Mental Health for a scheduled appointment with the psychiatrist. He also missed a therapy appointment on November 9, 2017.</p>
4	<p>“The defendant shall participate, as directed and approved by the probation officer, in treatment for narcotic addiction, drug dependence, or alcohol dependence which may require residence and/or participation in a residential treatment facility or residential reentry center.”</p> <p>On November 8, 2017, this officer attended an assessment appointment with the offender at Salvation Army Adult Rehabilitation Center. This is a six-month inpatient program for those suffering from substance abuse problems. On that date, Mr. Williams was positive for alcohol so he could not be admitted into the program. Due to Mr. Williams’ mental health concerns and need for medication, the director made an exception to accept the offender into their program on November 28, 2017. The</p>

program normally does not accept those with Mr. Williams mental health diagnosis. He was instructed to arrive on November 28, 2017, with a 30 day supply of his psychiatric medication. The reason for this requirement was because clients are not permitted to leave during the first 30 days of the program. Mr. Williams arrived at the facility on November 28, 2017, in a heighten state of anger, and he did not have his medication as required; therefore, the director would not admit him into the program. He will likely not be eligible for this program again in the future due to these circumstances.

4. The Court finds that:
 - (a) The highest grade of violation is a Grade C violation.
 - (b) Defendant's criminal history category is V.
 - (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 7 to 13 months' imprisonment.
5. The parties jointly recommended a sentence of thirty (30) days, with twenty-four (24) months of supervised release to follow.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, recommends that the Court find that the Defendant violated the conditions set forth in the Petition, that his supervised release be revoked, and that he be sentenced to the custody of the Attorney General or his designee for a period of thirty (30) days, with twenty-four (24) months of supervised release to follow. In addition to the mandatory conditions of supervision, the following conditions of supervised release should be imposed:

1. You shall report to the probation office in the district to which you are released within 72 hours of release from the custody of the Bureau of Prisons.
2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3. You shall permit a probation officer to visit you at a reasonable time at home, or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer.

4. You shall not knowingly leave the judicial district without the permission of the court or probation officer.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege.
6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact.
7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in residence occupants, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon.
9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
12. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision.

Justification: These conditions are recommended to assist the probation officer in supervising the offender and facilitating re-entry into the community, as well as to promote respect for the law and reduce recidivism.

13. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The Court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer.
14. You shall pay the costs associated with the following imposed conditions of supervised release/probation, to the extent you are financially able to pay: substance abuse

treatment and substance abuse testing. The probation officer shall determine your ability to pay and any schedule of payment.

15. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage.
16. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods.
17. You shall not use or possess alcohol.
18. You shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, Spice, glue, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption
19. You shall not knowingly enter any bar, tavern, liquor stores, etc. without the permission of the probation officer.
20. You shall be monitored by mobile alcohol monitoring, such as Soberlink, for a period of 180 months, to commence as soon as practical, and shall abide by all the technology requirements.

Justification: The offender has a history of marijuana abuse and alcohol addiction. Since his release from the Bureau of Prisons in August 2017, the offender has been in a constant state of alcohol intoxication. He also has tested positive for marijuana. He also has prior convictions for narcotics dealing cocaine and possession of marijuana, as well as possession of liquor by a minor. These conditions will assist the probation officer in monitoring the offender's compliance with regard to alcohol and controlled substance use and ensure he is receiving appropriate treatment levels.

21. You shall participate in a mental health treatment program, as approved by the probation officer, and abide by the rules and regulations of that program. The probation officer, in consultation with the treatment provider, shall supervise participation in the program (provider, location, modality, duration, intensity, etc.). You shall take all mental health medications that are prescribed by your treating physician. The court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer.

Justification: The offender has a documented history of mental illness that has been treated at a variety of locations through medication management and cognitive treatment services. Without mental health services, this offender is a risk of danger to

himself and the community. His criminal history, his compliance while in custody and on supervision

22. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches.

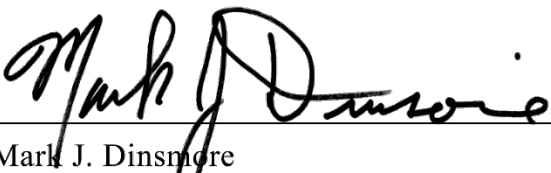
Justification: The offender has a history of firearms possession (instant offense and other convictions/arrests), drug use, drug possession, alcohol abuse, narcotics distribution and suffers from a diagnosed mental illness. This condition will assist the probation officer in monitoring compliance and provide a measure of protection to the community.

Defendant reviewed conditions 1 through 22 as set forth above, and they were reviewed by Defendant with his attorney. Defendant, on the record, waived reading of the above-noted conditions of supervised release.

Defendant Williams is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Dated: 29 DEC 2017



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

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